

07.05.2022

Present: Sh. Satish Kumar and Sh. Abhishek, Ld. Counsels for the plaintiff.
Sh. Rupak Srivastava, Ld. Counsel for the defendant with defendant in person.

Today matter is listed for DE, however, neither affidavit of witness supplied in advance nor ready today. Instead, defendant has filed an application under Section 151 CPC whereby defendant is praying for an opportunity to cross examine the plaintiff's witness. It has been stated in the application that the defendant should not be allowed to suffer on account of mistake of counsel for the defendant. It has been further stated in the application that on 23.11.2021 matter was adjourned for 09.08.2022 and counsel for defendant was very much confident that the matter would be taken up by the Court on 09.08.2022. However, he was shocked to know that right of the defendant was closed on 09.03.2022. Copy of diaries have been annexed.

Perusal of copy of diaries shows that in the diary dated 21.11.2021 next date of hearing has been mentioned as 09.08.2022 but number "8" is appears to have been made from "3". It is true that on the diary dated 09.03.2022 such case has not been mentioned but manipulation in the number "3" which appears to have been made as "8" does not lent credence to the diary submitted by Ld. Counsel for the defendant.

Perusal of the court record further shows that chief examination of PW-2 was recorded on 23.10.2019 and cross examination

of the said witness was deferred as affidavit of said witness was supplied to the Counsel for the defendant on that day. Thereafter, matter was adjourned for 02.03.2020 on which date, Proxy Counsel for defendant appeared and sought adjournment on account of some personal difficulty of the main counsel Sh. Rupak Srivastava. On 02.03.2020, affidavit of said witness was again supplied on that day. Thereafter, matter was adjourned for 17.07.2020. On 17.07.2020, matter was taken up through VC but on that day neither plaintiff nor defendant appeared and matter was adjourned for 19.11.2020. On 19.11.2020, proxy counsel for defendant no. 2 appeared and defendant no. 1 appeared in person and matter was adjourned for 20.07.2021. On 20.07.2021, Court was on leave and matter was adjourned for 23.11.2021. On 23.11.2021, no one appeared on behalf of the defendant and matter was adjourned for 09.03.2022, on which date neither the plaintiff nor defendant appeared and cost of Rs.5,000/- was imposed upon the plaintiff and matter was adjourned for 08.04.2022. On 08.04.2022, no one appeared on behalf of the defendant and as such right of the defendant to cross examine PW-2 was closed and matter was adjourned for today i.e. 07.05.2022 for DE.

Ld. Counsel for defendant no. 1 Sh. Rupak Srivastava lastly appeared in the present matter on 23.10.2019 and thereafter, he neither appeared. Counsel being conversant with law and procedure of the Court owes duty towards his client but he failed to do so by not appearing in any of the dates of hearing noted herein above. As per record, he is not vigilant in the present matter and he submits that in his 15 years of career it has never happened so. This Court is not in position to accept or refuse the said submission as record of counsel Sh. Rupak Srivastava is not available with

this Court so this Court cannot comment what was his conduct in another matters in which he is representing his other clients but so far this case is concerned certainly he is failing in his duty which is also reflected from the fact that today not to speak of supplying the advance copy of evidence affidavit of the witness of the defendant, he has not even prepared the same for today. He is unable to explain as to why he did not prepare the affidavit. This further reflects on his conduct that he is failing in his duty. In these circumstances, Court is left with no option but to dismiss the present application as there is no mechanism available with the Court to punish the Counsels for their negligence/mistake/mis-conduct. Hence, the application under Section 151 CPC is hereby dismissed. Defendant no. 1 if she wishes she may hold her counsel responsible for the adverse result, if any, of the case.

Since this is first date for DE another opportunity is given to defendant to lead DE. Copy of affidavit of witnesses be supplied in advance atleast 15 days prior to next date of hearing.

Put up for DE on **18.07.2022**.

(Harish Kumar)
ADJ-02/ North/ Rohini Court
Delhi/07.05.2022